

#### Determining Compliance With the Written Description Requirement:

"An objective standard for determining compliance with the written description requirement is, "does the description **clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed.**" *In re Gosteli*, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Under *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991), to satisfy the written description requirement, an **applicant must convey with reasonable clarity to those skilled in the art** that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed. The test for sufficiency of support in a parent application is whether the disclosure of the application relied upon "reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter." *Ralston Purina Co. v. Far-Mar-Co., Inc.*, 772 F.2d 1570, 1575, 227 USPQ 177, 179 (Fed. Cir. 1985) (quoting *In re Kaslow*, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983)).

Moreover, it is stated in that same section of the MPEP that:

"An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using **such descriptive means as words, structures, figures, diagrams,** and formulas that fully set forth the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997).

Also, the same section of the MPEP sets forth that

"The subject matter of the claim **need not be described literally** (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement."

Firstly, all drawing figures as originally filed show nothing but a flat handle loop part positioned flat and flush without folds on the container wall or patch. Moreover, the specification sets forth (page 4, 2nd paragraph) that

*"The support patch 6 is comprised expediently of thermoplastic plastic film that can be continuously glued to the strap handle 2 wherein, however, in the area of the handle loop portion 4 of the strap handle 2 the adhesive force is reduced by a release coating applied to the carrying patch 6 such that the handle loop portion 4 can be separated without difficulties from the support patch 6."*

Continuous gluing of the patch 6 to the strap handle 2 with a release coating in the

area of the loop portion 4 so that the loop portion can be separated from the support patch 6 also is evidence that the handle loop part is not folded and lies flat on the patch 6.

Also, the specification sets forth on page 3, last sentence of the 2nd to last paragraph, that:

*"In practice, the **strap handle 2 is positioned flat and flush** on the exterior side of the container wall 1, but, for carrying purposes, can be lifted off the exterior side of the container wall 1 in the area of the handle loop part 4."*

The term "flush" (adjective) according to Merriam Webster OnLine (see attached copy) means:

"4a: having or forming a continuous plane or unbroken surface".

A fold would not be a continuous plane or unbroken surface; a fold would form a protrusion or step and an interruption of the surface.

Therefore, it is respectfully submitted that "the description **clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed**" (MPEP 2163.02). The specification and drawings as a whole provide support for the handle loop part resting flat without being folded on the support patch. The subject matter as claimed is no departure from or addition to what is originally disclosed; applicant has merely employed language not literally set forth.

Reconsideration and withdrawal of the rejection of the claims under 35 USC 112, 1st paragraph - new matter - are respectfully requested.

#### **Rejection under 35 U.S.C. 102**

Claims 13, 15, 16 25, 28 stand rejected under 35 U.S.C. 102(b) as being anticipated by *Huckriede et al. (US 6,010,004)*.

Claim 13 sets forth that

"... the strap handle is comprised of ends that are glued or attached by a heat seal seam to the first face of the support patch and further comprised of a handle loop part extending between the ends and resting flat without being folded on the support patch;".

The claim language sets forth that the handle loop part extends between the ends, i.e., is delimited by the ends that are glued/attached to the support patch, and that the

handle loop part (i.e., the section of the handle extending between the ends) rest flat on the support patch without being folded.

*Huckriede et al.* shows that the handle loop part has a portion that is folded at 29. Therefore, parts of the handle loop portion may extend flat without being folded, but not the handle loop part extending between the ends.

The instant claim language clearly sets forth that the handle loop part - end to end - extends flat without being folded (or "flush" as set forth in the specification) on the support patch. This provides for an inconspicuous arrangement of the handle within the contour of the container without there being any unsightly protrusions or thicker parts so that there are no limitations with regard to the design of and printing on the exterior surface of the container.

Claim 13 is also not obvious in view of *Huckriede et al.* because the configuration of the loop part with extra material provided in the fold is a necessity in *Huckriede et al.* as the perforation 36 for accessing the loop part is at the corner between top side and lateral side and extends transverse to the loop part extension so that extra material must be provided in order to allow gripping of the handle.

Claim 13 is therefore not anticipated by *Huckriede et al.* and should be allowable together with its dependent claims.

Reconsideration and withdrawal of the rejection of the claims under 35 USC 102 are respectfully requested.

#### **Rejection under 35 U.S.C. 103**

Claims 17-20, 24, 26, 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Huckriede et al.* (US 6,010,004). Claims 17-20, 24, 26, 27 are believed to be allowable as dependent claims of claim 13.

#### **ALLOWABLE SUBJECT MATTER**

Claim 23 is allowed.

#### **CONCLUSION**

In view of the foregoing, it is submitted that this application is now in condition for

allowance and such allowance is respectfully solicited.

Should the Examiner have any further objections or suggestions, the undersigned would appreciate a phone call or **e-mail** from the examiner to discuss appropriate amendments to place the application into condition for allowance.

Authorization is herewith given to charge any fees or any shortages in any fees required during prosecution of this application and not paid by other means to Patent and Trademark Office deposit account 50-1199.

Respectfully submitted on September 1, 2009,

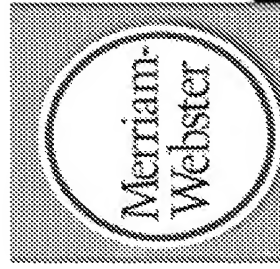
/Gudrun E. Hockett/

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Ms. Gudrun E. Hockett, Ph.D.  
Patent Agent, Registration No. 35,747  
Schubertstr. 15a  
42289 Wuppertal  
GERMANY  
Telephone: +49-202-257-0371  
US-Fax: (877) 470-9712  
gudrun.draudt@t-online.de

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- 1 flush (verb)
- 2 flush (noun)
- 3 flush (noun)
- 4 flush (verb)

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Main Entry: **flush**

Function: *adjective*

Date: circa 1568

**1 a** : of a ruddy healthy color **b** : full of life and vigor : LUSTY

**2 a** : filled to overflowing **b** : AFFLUENT

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**3** : readily available : **ABUNDANT**

**4 a** : having or forming a continuous plane or unbroken surface <flush paneling>

**b** : directly abutting or immediately adjacent: as (1) : set even with an edge of a type page or column : having no indentation (2) : arranged edge to edge so as to fit snugly

— **flush·ness** *noun*

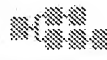
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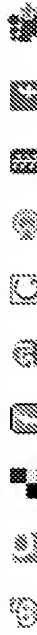
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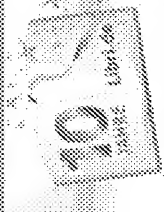
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Pronunciation Symbols

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